

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

ROBERT K. HUDNALL	§	
Plaintiff,	§	
	§	
v.	§	Cause No. 3:22-CV-00036-KC
	§	
STATE OF TEXAS, CITY OF EL PASO,	§	
TEXAS, JUDGE SERGIO ENRIQUEZ,	§	
ALEJANDRO C. RAMIREZ, TYRONE	§	
SMITH dba SMITH AND RAMIREZ	§	
RESTORARION LLC, GUY BLUFF,	§	
THE AMERICAN ARBITRATION	§	
ASSOCIATION, AND EVANSTON	§	
INSURANCE COMPANY	§	
Defendants.	§	

**DEFENDANT CITY OF EL PASO'S RESPONSE TO
PLAINTIFF'S MOTION FOR DECLARATORY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the CITY OF EL PASO ("the City"), Defendant in the above entitled and numbered cause, and hereby files its Response to Plaintiff's Motion for Declaratory Judgment and would respectfully show the Court as follows:

I. PROCEDURAL HISTORY

1. Robert K. Hudnall ("Plaintiff") filed his Original Petition against the City and others on December 2, 2021 in the County Court at Law Number Six of El Paso County, Texas under Cause Number 2021DCV4135, related to a contract dispute over roofing that occurred in 2014. [ECF No. 1-3].

2. The City filed its Original Answer, Special Exceptions, and Affirmative Defenses to Plaintiff's Original Petition on January 10, 2022 in the County Court at Law Number Six of El Paso County, Texas denying Plaintiff's allegations. [ECF No. 1-3].

3. Defendant Evanston Insurance Company (“Evanston”) timely filed its Notice of Removal in federal court on January 26, 2022 [ECF No. 1].

4. Plaintiff filed his Motion for Declaratory Judgment on February 28, 2022 [ECF No. 18] and a Second Motion for Declaratory Judgment on March 7, 2022 [ECF No. 26].

5. Defendants have fourteen days to respond to motions. Western District of Texas Local Rules CV-7(D)(2).

II. LEGAL STANDARD

6. Under Rule 57, a litigant may bring an action seeking declaratory judgment. An action for a declaratory judgment is “an ordinary civil action.” *Int’l Bhd. of Teamsters v. E. Conf. of Teamsters*, 160 F.R.D. 452, 456 (S.D.N.Y. 1995) (*citing* 10A Charles A. Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure §2768 (1983) (“The incidents of pleading, process, discovery, trial, and judgment are the same.”) (internal citations omitted)). Because an action for a declaratory judgment is an ordinary civil action, a party may not make a *motion* for declaratory relief, but rather, the party must bring an *action* for declaratory judgment. *Id.* (internal citations omitted).

III. ARGUMENT

7. In his motion, Plaintiff seeks relief for a declaratory judgment “[u]nder the Provisions of Federal Rules of Civil Procedure, Rule 57.” [ECF No. 18]. Because Plaintiff seeks a declaratory judgment, and because Rule 57 governs an action for a declaratory judgment, Plaintiff must comply with Rule 57’s requirements. *Int’l Bhd.*, 160 F.R.D. at 455. Because Plaintiff has made a *motion* seeking declaratory relief, Plaintiff’s motion should be denied because such a motion is inconsistent with the Federal Rules.

IV. CONCLUSION

8. **WHEREFORE, PREMISES CONSIDERED**, the City prays that this Court deny Plaintiff's Motion for Declaratory Judgment and for any other relief to which the City may be justly entitled in law or equity.

Respectfully submitted,

KARLA M. NIEMAN, City Attorney

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Date: March 14, 2022

By: /s/ Nicole J. Anchondo

Nicole J. Anchondo

Assistant City Attorney

State Bar No. 24073208

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Attorneys for Defendant City of El Paso

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response to Motion for Declaratory Judgment has been filed through the CM/ECF system on this 14th day of March, 2022. A copy of this Response has also been forwarded via mail, to the following party:

Robert K. Hudnall
5823 N. Mesa, #839
El Paso, Texas 79912
Tel.: (915) 478-1114
Plaintiff

/s/ Nicole J. Anchondo

Nicole J. Anchondo